

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

ROBERT FLEMISTER,

Defendant.

ORDER

99-cr-106-bbc

Defendant Robert Flemister has filed a motion under 18 U.S.C. § 3582, contending that he is entitled to a two-level reduction in his base offense level under the amendments relating to crack cocaine offenses. Technically, he is entitled to such a reduction; practically, it makes no sense.

On August 31, 2000, defendant was sentenced to 20 years in prison. His guideline range of imprisonment was 360 months to life. (His base offense level was 38; he was given a four-level increase for his role in the offense, two levels for using a juvenile to commit the offense and no downward adjustment for acceptance of responsibility.) The guideline sentence was constrained by the statutory maximum sentence of 20 years to which he was subject. If I were to give him a two-level reduction in his guidelines, it would reduce his total

offense level to 40, which with his criminal history category of II would produce a range of 324-405 months, but that is still higher than the 240-month sentence he is serving.

ORDER

IT IS ORDERED that the motion for resentencing under 18 U.S.C. § 3582 filed by defendant Robert Flemister is DENIED because his sentence, as imposed, was lower than his sentence would be if it were reduced under § 3582.

Entered this 27th day of December, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge